

Order

Michigan Supreme Court
Lansing, Michigan

June 28, 2005

Clifford W. Taylor
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

ADM File No. 2004-54

Proposed Amendments of
Rules 5.144, 5.203, 5.207, 5.302,
5.307, 5.404, and 5.409 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 5.144, 5.203, 5.207, 5.302, 5.307, 5.404, and 5.409 of the Michigan Court Rules. Before determining whether the proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposals or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted on the Court's website at www.courts.michigan.gov/supremecourt.

Publication of these proposals does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposals in their present form.

[The present language would be amended as indicated below by strikeouts and underlining.]

Rule 5.144 Administratively Closed File

(A) Administrative Closing. The court may administratively close a file

- (1) for failure to file a notice of continuing administration as provided by MCL 700.3951(3) or
- (2) for other reasons as provided by MCR 5.203(D) or, after notice and hearing, upon a finding of good cause.

In a conservatorship, the court may administratively close a file only when there are insufficient assets in the estate to employ a successor or special fiduciary after notice and hearing, upon a finding of good cause.

(B) [Unchanged.]

Rule 5.203 Follow-Up Procedures

Except in the instance of a personal representative who fails to timely comply with the requirements of MCL 700.3951(1), if it appears to the court that the fiduciary is not properly administering the estate, the court shall proceed as follows:

(A)-(C) [Unchanged.]

(D) Suspension of Fiduciary, Appointment of Special Fiduciary. If the fiduciary fails to perform the duties required within the time allowed, the court may do any of the following: suspend the powers of the dilatory fiduciary, appoint a special fiduciary, and close the estate administration. If the court suspends the powers of the dilatory fiduciary or closes the estate administration, the court must notify the dilatory fiduciary, the attorney of record for the dilatory fiduciary, the sureties on any bond of the dilatory fiduciary that has been filed, the financial institution where the dilatory fiduciary has deposited funds, any guardian ad litem, and the interested persons at their addresses shown in the court file. This rule does not preclude contempt proceedings as provided by law.

(E) [Unchanged.]

Rule 5.207 Sale of Real Estate

(A) Petition. Any petition to approve the sale of real estate must contain the following:

- (1) the terms and purpose of the sale,
- (2) the legal description of the property, ~~and~~
- (3) the financial condition of the estate before the sale, and
- (4) an appended copy of the most recent assessor statement showing the State Equalized Value of the property. If the court is not satisfied that the evidence provides the fair market value, a written appraisal may be ordered.

(B) [Unchanged.]

Rule 5.302 Commencement of Decedent Estates - **Alternative A**

(A) Methods of Commencement. A decedent estate may be commenced by filing an application for an informal proceeding or a petition for a formal testacy proceeding. A request for supervised administration may be made in a petition for a formal testacy proceeding. Except as provided in this court rule, requiring additional documentation at the time of filing the petition or application for commencement, such as a death certificate or additional information about the proposed personal representative, is prohibited.

(B)-(D) [Unchanged.]

Rule 5.302 Commencement of Decedent Estates - **Alternative B**

(A) Methods of Commencement. A decedent estate may be commenced by filing an application for an informal proceeding or a petition for a formal testacy proceeding. A request for supervised administration may be made in a petition for a formal testacy proceeding. When filing either an application or petition to commence a decedent estate, a certified copy of the death certificate must be attached. Requiring additional documentation, such as information about the proposed personal representative, is prohibited.

(B)-(D) [Unchanged.]

Rule 5.307 Requirements Applicable to all Decedent Estates

(A) Inventory Fee. Within 91 days of the date of the letters of authority, the personal representative must submit to the court the information necessary for computation of the probate inventory fee. In calculating the inventory fee, deductions shall be allowed for secured loans on property listed on the inventory, but no other deductions shall be allowed. The inventory fee must be paid no later than the filing of the petition for an order of complete estate settlement under MCL 700.3952, the petition for settlement order under MCL 700.3953, or the sworn statement under MCL 700.3954, or one year after appointment, whichever is earlier.

(B)-(D) [Unchanged.]

Rule 5.404 Guardianship of Minor

(A) Petition for Guardianship of Minor. If the court requires the petitioner to file a social history before hearing a petition for guardianship of a minor, it shall do so on a form approved by the State Court Administrative Office. The information in the social history for minor guardianship is confidential, and it is not to be released other than to the court, the parties, or the attorneys for the parties, except on court order.

~~(A)-(E)~~[Relettered (B)-(F), but otherwise unchanged.]

Rule 5.409 Report of Guardian; Inventories and Accounts of Conservators

(A) [Unchanged.]

(B) Inventories.

(1) [Unchanged.]

(2) Filing and Service. Within 56 days after appointment, a conservator or, if ordered to do so, a guardian shall file with the court a verified inventory of the estate of the protected person, serve copies on the persons required by law or court rule to be served, and file proof of service with the court. In valuing joint property listed on the inventory, the conservator or guardian must identify the value of the part of the property owned by the ward.

(C) Accounts.

(1) Filing, Service. A conservator must file an annual account unless ordered not to by the court. A guardian must file an annual account if ordered by the court. The account must be served on interested persons, and proof of service must be filed with the court. The copy of the account served on interested persons must include a notice that any objections to the account should be filed with the court and noticed for hearing. When required, an accounting must be filed within 56 days after the end of the accounting period.

(2)-(3) [Unchanged.]

(4) Exception, Conservatorship of Minor. Unless otherwise ordered by the court, no accounting is required in a minor conservatorship where the assets are restricted or in a conservatorship where no assets have been received by the conservator. If the assets are ordered to be placed in a restricted account, proof of the restricted account must be filed with the court within 14 days of the conservator's appointment or receipt of funds. The conservator must file with the court an annual verification of funds on deposit with a copy of the corresponding financial institution statement attached.

(5) Contents. The accounting is subject to the provisions of MCR 5.310(C)(2)(c) and (d), except that references to a personal representative shall be to a conservator. A copy of the corresponding financial institution statement for all liquid assets, dated within 30 days of the end of the accounting period, must be appended to verify assets on hand at the end of the accounting period, unless waived by the court for good cause.

(6) Periodic Review. The court shall either review or allow accounts annually. Accounts should be allowed at least once every three years. ~~Unless accounts have been allowed, the court shall review the accounts no less often than once every three years.~~

(D)-(F)[Unchanged.]

Staff Comment: The proposed amendments result from the State Court Administrative Office's statewide conservatorship case review prompted by the Performance Audit of Selected Probate Court Conservatorship Cases by the Michigan Office of the Auditor General, and the State Bar of Michigan Probate and Estate Planning Section's Uniformity of Practice Committee's survey of probate court practices. The amendment of MCR 5.144(A)(2) eliminates the ability to close a

conservatorship estate because of suspension of a fiduciary unless there are insufficient funds available to hire a special fiduciary, only after notice, hearing, and a showing of good cause. The amendment of MCR 5.203(D) adds the financial institution and guardian ad litem to the list required to receive notice when a fiduciary is suspended. The amendment of MCR 5.207(A) allows for better court oversight when real property is sold. [Alternative A - The amendment of 5.302(A) prohibits a court from requiring documentation to commence an estate that is not legally required.] [Alternative B - The amendment of 5.302(A) requires that a certified copy of a death certificate be attached to the petition or application when commencing a decedent estate and requiring additional documentation is prohibited.] The amendment of MCR 5.307(A) allows for the deduction of secured loans when calculating the inventory fee due. The amendment of MCR 5.409(C)(1) clarifies that the fiduciary must serve the account on the interested persons and file the proof of service with the court. The amendment of MCR 5.404(A) creates a new subsection that requires the use of an SCAO approved social history form when one is required to be filed with a petition for guardianship of a minor. The amendment of MCR 5.409(B)(2) requires the valuation of the portion of joint property listed on the inventory that belongs to the protected individual. The amendment of MCR 5.409(C)(4) provides the process for filing a proof of restricted account and annual verification of funds on deposit with the court. The amendment of MCR 5.409(C)(5) adds the requirement to attach a financial institution statement to the annual account. The amendment of MCR 5.409(C)(6) requires the court to either review or allow the account annually and to allow the accounts at least once every three years.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by October 1, 2005, at P. O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2004-54. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 28, 2005 Corbin R. Davis Deputy Clerk